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January 30, 1978

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Interstate Commerce Commission
12th & Constitution Avenues, N.W.
Room 1227
Washington, D.C. 20423

Attention: Ms. Mildred Lee

Re: Burlington Northern Inc.;
Lease of 38 Tri-level Enclosed Auto Racks

Gentlemen:

Enclosed please find for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, two original counterparts and seven copies of the Second Amendment (dated as of January 12, 1978) to an Equipment Lease dated as of May 1, 1976. In addition, a check for \$10.00 covering the required recording fee is enclosed.

A general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof. The Equipment Lease was originally filed with the Secretary of the Commission on June 14, 1976, and has been assigned Recordation No. 8364.

The names and addresses of the parties are:

Lessor: First National Bank and Trust
Company of Evanston,
as Trustee
800 Davis Street
Evanston, Illinois 60204

Lessee: Burlington Northern Inc.
Burlington Northern Building
176 East Fifth Street
St. Paul, Minnesota 55101

RECORDATION NO. 8364-6 Filed & Recorded

FEB 8 1978 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

8-000A045

FEB 8 1978

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EXECUTED IN 10 COUNTERPARTS

No. 10

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MISSISSIPPI COMMISSION OF RECORDS

CONDITIONAL SALE AGREEMENT

Dated as of May 15, 1976,

Among

SOUTHERN REGION INDUSTRIAL REALTY, INC.,
GANTT MANUFACTURING CORPORATION

and

SOUTHERN RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT

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Note: This Table of Contents is for convenience of
reference and is not part of the Agreement.

CONDITIONAL SALE AGREEMENT dated as of May 15 1976, among each of the corporations named in Item 1 of Schedule A hereto and Southern Railway Company, a Virginia corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to acquire or construct and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Sellers Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and their respective successors, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Seller", whenever used in this Agreement, means, both before and after any such assignment, the respective corporations (as to the units of Equipment to be acquired or constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and their respective successors.

The rights and obligations of the Sellers under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Seller" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors

as herein provided.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Seller has acquired or shall construct the units of the Equipment as described in Schedule B hereto (such Equipment with respect to each Seller being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Seller and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which has been or shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may have been or may be agreed upon in writing between such Seller and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of the applicable Specifications, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment, and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be standard-gauge railroad equipment, first put into service not earlier than December 1, 1975.

ARTICLE 3. Inspection and Delivery. Each Seller will deliver the units of its Equipment to the Railroad at the place or places designated from time to time by the Railroad, freight charges, if any, prepaid in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Seller shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof) or event which with lapse of time and/or demand could constitute such an event of default shall have occurred.

Each Seller's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Seller's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen,

accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Seller or Sellers of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Seller's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Seller, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or such other appropriate method of financing, as the Railroad shall determine.

During construction, the Equipment has been or shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Seller which is constructing its Equipment shall grant to such authorized inspectors reasonable access to its plant. Each Seller agrees that all materials used in the construction of the Equipment have been or shall be inspected in accordance with the standard quality control practices of such Seller or the manufacturer of any of the Equipment heretofore acquired by it, as the case may be. Each unit of the Equipment has been, or upon completion of such unit shall be, presented to an inspector of the Railroad for inspection. If each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Seller a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Seller shall not thereby be relieved of its warranty

referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Seller of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is in accordance with the contract under which the respective units of Equipment have been or are being built. The term "Purchase Price" as used herein for any unit of the Equipment shall mean the base price or prices as so increased or decreased.

For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of the Equipment delivered to and accepted by the Railroad as the respective Sellers and the Railroad may agree to consisting of all units of Equipment not yet settled for which an invoice or invoices and the Certificate or Certificates of Acceptance are presented by the Seller thereof at least 7 business days prior to settlement.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of \$2,600,000 (or such higher amount, not exceeding \$2,683,300, as may be available to the assignee of this Agreement if this Agreement is assigned by the Sellers) and any amount or amounts previously paid or payable by the Railroad with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in an integral cent) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice subject to an upward adjustment upon determination of the final Purchase Price and a supplemental invoice may be presented by a Seller for settlement on a subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by each Seller that any preliminary invoice or invoices presented by such Seller in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group. The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on June 1 in each year commencing on June 1, 1977, to and including June 1, 1991. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 8-3/4% per annum. Such interest shall be payable, to the extent accrued, on June 1 and December 1 in each year, commencing December 1, 1976.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after June 4, 1976, and prior to June 2, 1977, [hereinafter called the Cut-Off Date]), as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; provided, however, that the aggregate Invoiced Purchase Prices of all Equipment settled for pursuant to this Agreement on any Closing Date occurring prior to August 2, 1976, shall not, without the consent of the Vendor, exceed \$1,800,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 9-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly

and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale and any certificate or certificates of title to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not

theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to deliver such certificate of certificates of title or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to deliver such certificate of certificates of title or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one-half inch in height, the words "OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT RECORDED WITH THE INTERSTATE COMMERCE COMMISSION UNDER SECTION 20C OF THE INTERSTATE COMMERCE ACT" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or

initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or damaged in the opinion of the Railroad beyond economic repair or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or if compliance with any law or regulation of any Federal, state or local governmental authority or legislative, executive or judicial body having authority or jurisdiction or with the interchange rules of the Association of American Railroads would require the change or replacement or addition of any equipment or appliance to any unit or units of the Equipment and such compliance would in the opinion of the Railroad be uneconomical (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence, in each case with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) shall exceed \$100,000 (or such lesser amount as the Railroad may elect) the Railroad shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, as the Railroad may from time to time direct in a written instrument filed with the Vendor, be applied (so long as no event of default shall have occurred and be continuing), in whole or in part, as provided in paragraph 7 of this Article 8, to to prepay instalments of Conditional Sale Indebtedness or toward the cost of a unit or units of standard-gauge railroad equipment (other than passenger or work equipment of types other than freight or switching locomotives, ballast cars or cabooses) first put into service not earlier than December 1, 1975, as evidenced by a certificate of an operating officer of the Railroad, to replace units suffering a Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad

shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment does not exceed the fair value thereof. The fair value of any unit of Equipment theretofore used in Railroad service shall be deemed to be the cost thereof to the Railroad less depreciation accrued thereon computed by the straight-line method at the rate of $6\frac{2}{3}\%$ of said cost for each full year (but not pro rata for any part of a year) from the date on which the unit was first acquired by the Railroad to the date as of which the fair value is to be determined.

In case any amount paid to the Vendor pursuant to this Article 8 is to be applied to prepay instalments of the Conditional Sale Indebtedness, the Railroad, at the time of giving written direction with respect thereto (which shall be given not less than ten business days prior to the June 1 or December 1 on which such amount is to be applied to such prepayment as hereinafter provided), shall pay to the Vendor a sum equal to the interest to be accrued on the amount of the Conditional Sale Indebtedness to be prepaid as of the June 1 or December 1 next succeeding the date of such written direction, and the Vendor shall on such date apply such amount so to be applied, together with said interest due thereon, to the prepayment of instalments of the Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof together with interest thereon accrued to such date, but without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness as of the date payment is made with respect to such Casualty Occurrence

bears to the unpaid Conditional Sale Indebtedness as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause each replacement unit to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Seller's having any liability or obligation with respect to any replacement unit or units not sold by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time of replacement for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is standard-gauge railroad equipment (other than work or passenger equipment of types other than freight or switching locomotives, ballast cars or cabooses) first put into service not earlier than December 1, 1975, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, the fair value thereof; and

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests

and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) bonds, notes or direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest thereon, (ii) bonds, notes, debentures or other direct obligations of agencies of the United States Government, which obligations are legal for investment in the State of New York for commercial banks, savings banks, insurance companies and various fiduciary and trust funds, (iii) open market commercial paper rated A-1 by Standard & Poor's Corporation or prime -1 or better by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, (iv) certificates of deposit or time deposits of commercial banks or trust companies (including the Vendor, if the Vendor ever is such a bank or trust company) in the United States of America or one of the states thereof having a capital and surplus aggregating at least \$50,000,000, in each case maturing in not more than one year from the date of such investment, or (v) bankers' acceptances which are eligible for purchase in the open market by Federal Reserve Banks of banks or trust companies (including the Vendor, if the Vendor ever is such a bank or trust company) having a capital and surplus aggregating at least \$50,000,000 (such investments being hereinafter called Investments). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) and any certificate or certificates of title for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. Except as provided in Article 8, the Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good operating order and repair at its own expense.

Except as provided in Article 8, during the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

The Railroad represents that the Equipment has an expected useful life of at least 15 years.

ARTICLE 10. Reports and Inspections. So long as any of the Conditional Sale Indebtedness shall be outstanding hereunder, on or before April 30 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) or for any other reason and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times not more often than once in each calendar year as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment, and the Railroad and any affiliate of the Railroad shall have the full right of use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it or any affiliate has trackage or operating rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Seller to the Railroad, but only upon and subject to all the terms and conditions of this Agreement and the Railroad may receive compensation for such use; provided, however, that the Railroad agrees not to use, assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and agrees that any use of any unit of the Equipment outside the United States of America will be limited to incidental and temporary use in Canada or Mexico. The word "affiliate", as used in this

Article 11 and in Article 7 hereof, shall mean any railroad corporation organized under the laws of any state of the United States of America or the District of Columbia which directly or indirectly controls, or is controlled by, or is under common control with, the Railroad.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges mined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Seller which shall have manufactured its Equipment. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Warranty of Material and Workmanship. The agreements of the parties hereto with respect to material and workmanship and patent indemnification is set forth in Schedule A hereto.

ARTICLE 15. Assignments. Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Seller from, any of the obligations of such Seller to construct and/or deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Sellers under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment which shall continue for 10 business days after notice thereof by the Vendor to the Railroad;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the

Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall

(a) to the Railroad, if delivered, at Southern Railway Building, 15th and K Street, N.W., Washington, D.C., Attention of Treasurer, and, if mailed, by first class mail, postage prepaid, at P. O. Box 1808, Washington, D.C. 20013, Attention of Treasurer,

(b) to a Seller, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Railroad represents and warrants that its executive offices are in Washington, D. C.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed

by all the parties so long as any counterpart be signed by the Railroad and one or more Sellers. If this Agreement is assigned by any Seller, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Seller and delivered to such assignee. Each Seller shall be bound hereunder, notwithstanding the failure of any other Seller to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

SOUTHERN RAILWAY COMPANY,

[Corporate Seal]

by

K.A. Fletcher
Vice President

Attest:

RA Allen
Assistant Secretary

SOUTHERN REGION INDUSTRIAL
REALTY, INC.,

[Corporate Seal]

by

K.A. Fletcher
Vice President

Attest:

RA Allen
Assistant Secretary

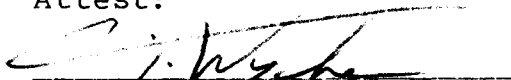
GANTT MANUFACTURING CORPORATION,

by


~~Vice~~ President

[Corporate Seal]

Attest:


~~Assistant~~ Secretary

DISTRICT OF COLUMBIA) ss.:

On this 10th day of June 1976, before me personally appeared K. A. Stoecker, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[Notarial Seal]

My Commission expires

NOTARY PUBLIC, DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JUNE 14, 1978

DISTRICT OF COLUMBIA) ss.:

On this 10th day of June 1976, before me personally appeared K. A. Stoecker, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN REGION INDUSTRIAL REALTY, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[Notarial Seal]

My Commission expires

NOTARY PUBLIC, DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JUNE 14, 1978

STATE OF *South Carolina*,)
COUNTY OF *Greenville*,) ss.:

On this *3rd* day of June 1976, before me personally appeared *F.E. Haag*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GANTT MANUFACTURING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

C. D. Cliff

Notary Public

[Notarial Seal]

My Commission expires *11/19/79*

SCHEDULE A

Item 1: (a) Delivery Address: Southern Region Industrial
Realty, Inc.,
Southern Railway Building,
15th and K Street, N.W.
Washington, D.C.
Attention of Treasurer.

Mailing Address: Southern Region Industrial
Realty, Inc.,
P. O. Box 1808,
Washington, D.C. 20013
Attention of Treasurer.

(b) Gantt Manufacturing Corporation,
P. O. Box 1946
Greenville, South Carolina 29602

Item 2: (a) SOUTHERN REGION INDUSTRIAL REALTY, INC.

The Seller warrants and the Railroad warrants that the Seller's Equipment has been built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter in this Schedule A called the Agreement) and will be free from defects in material and workmanship under normal use and service.

The Seller gives no further warranties, express or implied, with regard to the Equipment except as to title to the Equipment.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the

use in or about the construction or operation of any of the Seller's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Seller agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Seller has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials purchased or otherwise acquired by the Seller for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Seller further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action; IT BEING UNDERSTOOD, HOWEVER, THAT THE SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO FREEDOM FROM PATENT INFRINGEMENT WITH RESPECT TO THE EQUIPMENT. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

(b) GANTT MANUFACTURING CORPORATION

The Seller warrants that the units of the Equipment will be built in accordance with the Specifications and other requirements, specifications and standards set forth or referred to in Article 2 of the Agreement and that its Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and

not manufactured by the Seller), workmanship and design (except as to designs specified by the Railroad and not developed or purported to be developed by the Seller) under normal use and service, the Seller's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Seller with transportation charges prepaid and which the Seller's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and of all other obligations or liabilities on the part of the Seller, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment except as aforesaid. The Seller further agrees with the Railroad that the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall not be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Seller will hold harmless the Railroad from claims, costs and liability to the Seller's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Seller and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Seller, the Seller agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses,

including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of Seller's Equipment because of the use in or about the construction or operation of any of the Seller's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Seller's Equipment of any article or material specified by the Railroad and not manufactured by the Seller or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Seller which infringes or is claimed to infringe on any patent or other right. The Seller agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Seller has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by the Seller for use in or about the construction or operation of any of the Seller's Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Seller further agrees to execute and deliver to the Railroad or the users of the Seller's Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Seller will give notice to

the Railroad of any claim known to the Seller from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Seller of any claim known to the Railroad from which liability may be charged against the Seller hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

SCHEDULE B

<u>Seller</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Specifications</u>	<u>Seller's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Southern Region Industrial Realty, Inc.	100 ton Ballast Cars	MWB	NCP-139	-	50	\$ 35,335	\$ 1,766,750	994250-- 994299	June 1976- August 1976
Gantt Manufactur- ing Corporation	Cabooses	NE	NCP-162	Greenville, South Carolina	20	41,650	833,000	X-335-- X-354	July 1976- September 1976 Greenville, South Carolina
Total Cost							<u>\$ 2,599,750</u>		